



FREDERICK COUNTY PLANNING COMMISSION

November 13, 2013

TITLE:

Locust Level Lot 1A

FILE NUMBER:

**S-1044, AP #13780, APFO #13782, FRO
#13784**

REQUEST:

**Combined Preliminary/Final Subdivision
and APFO Approval**

The Applicant is requesting major subdivision approval to re-subdivide the existing 26.61 acre Lot 1 into one (1) new 1.04 acre lot to be known as Lot 1A.

PROJECT INFORMATION:

ADDRESS/LOCATION: 7400 Guilford Drive; located on the northwest corner of Guilford Drive and MD 85.

TAX MAP/PARCEL: Tax Map 77, Parcel 306

COMP. PLAN: General Commercial (GC)

ZONING: General Commercial (GC)

PLANNING REGION: Frederick

WATER/SEWER: W-1/S-1

APPLICANT/REPRESENTATIVES:

APPLICANT: Sonic Outpost LLC.

OWNER: Wal-Mart Real Estate Business Trust

ENGINEER: Frederick, Seibert & Associates, Inc.

ARCHITECT: N/A

ATTORNEY: N/A

STAFF:

Tolson DeSa, Principal Planner II

RECOMMENDATION: Conditional Approval

ATTACHMENTS:

Exhibit 1-Site Plan Rendering: Lot 1A
Exhibit 2- Letter of Understanding (LOU)

STAFF REPORT

ISSUE

The Applicant is requesting major subdivision approval to re-subdivide the existing 26.61 acre Lot 1 to create one (1) new 1.04 acre Lot 1A (See Graphic #1). Throughout Locust Level there have been at least 8 lots created by subdivision from the original 1965 parcel.

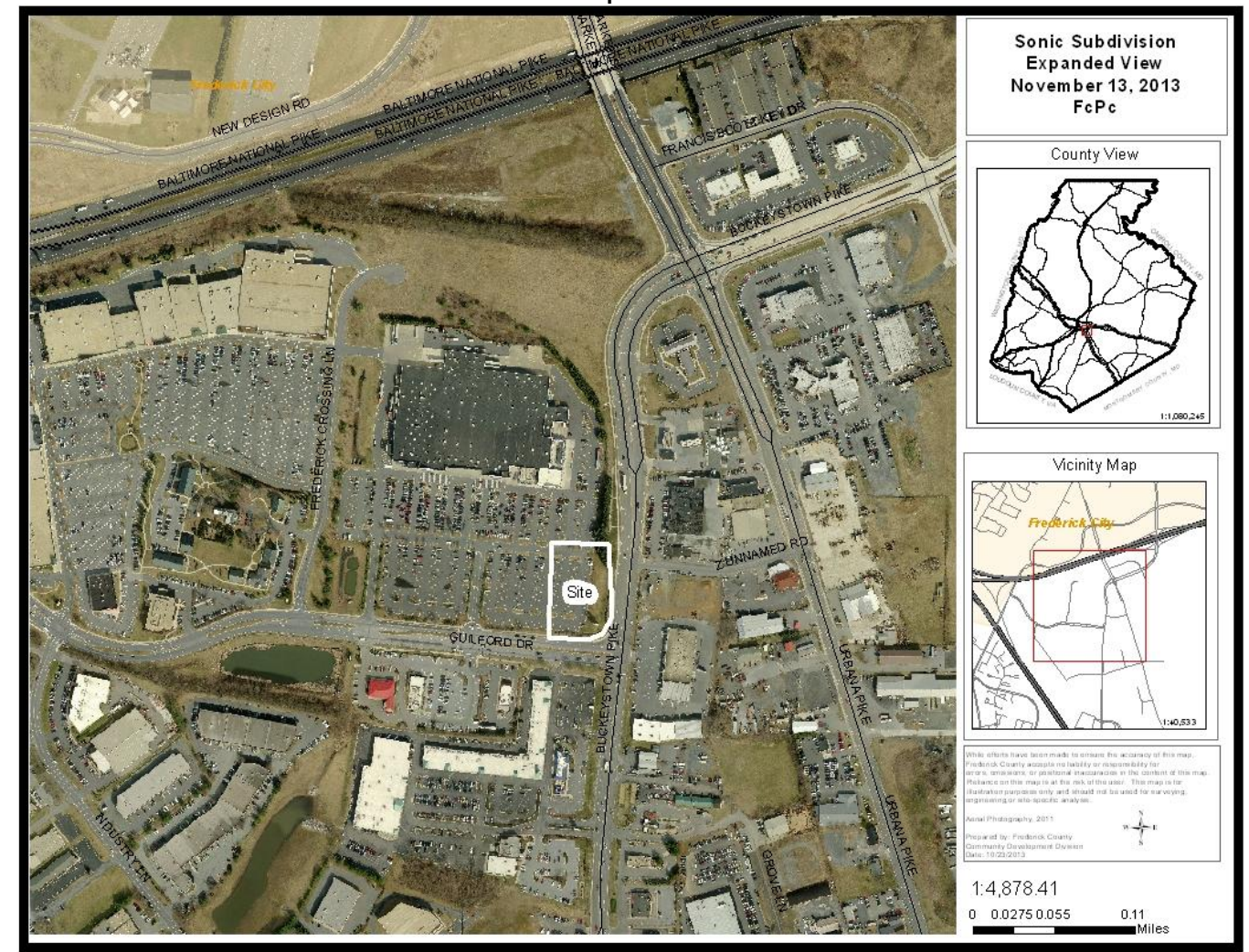
Development Request

This will be the 9th lot taken off of the Locust Level tract; therefore this subdivision is considered a major subdivision. Major subdivisions must be approved by the Planning Commission.

This site is proposed to be the location of a 1,704 square foot restaurant, with a drive through and 40-seat outdoor dining area, the use will also have 22 covered parking spaces for drive-up serving stations. Traffic APFO will be addressed with this combined preliminary/final subdivision plat, and a separate site development plan SP-97-36 (AP# 13781) has been submitted for the proposed restaurant.

The Adequate Public Facilities Ordinance states that all commercial/industrial subdivisions must be tested for APFO. Therefore, this subdivision is before the Frederick County Planning Commission for Combined Preliminary/Final Subdivision Plat and APFO approval.

Graphic #1



BACKGROUND

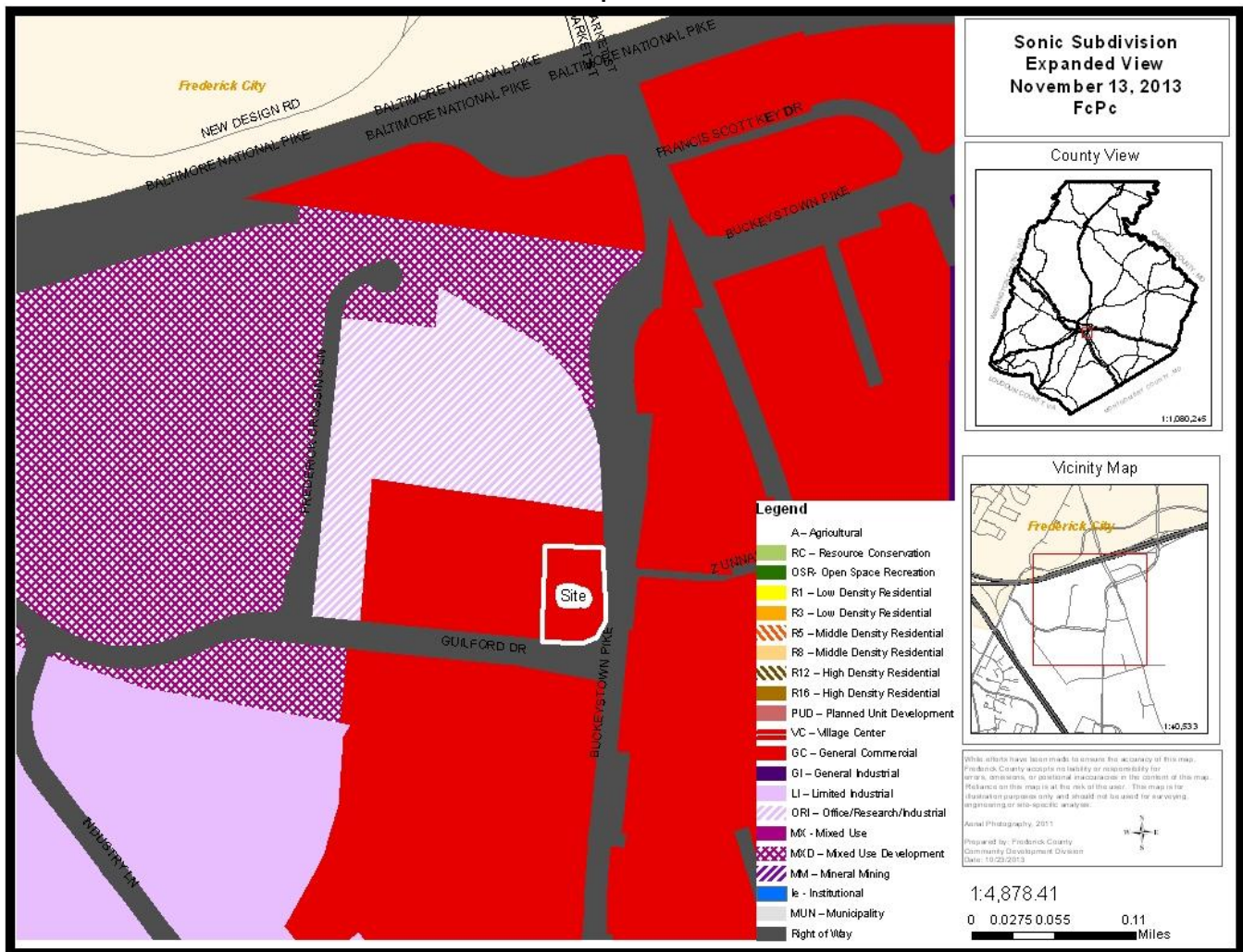
Development History

The Wal-Mart retail center site development plan was approved in 1999; the portion of the original site that is the subject of the subdivision request is a surface parking lot. The proposed 1.04-acre lot is currently a portion of the 26.61-acre remainder of Lot 1.

Existing Site Characteristics

The site is currently zoned General Commercial, and is developed as parking for the existing Wal-Mart Retail Store (See Graphic #2). The property to the west of the site is developed with the Frederick Crossing Retail Center, with associated parking spaces.

Graphic #2



ANALYSIS

A. LAND, DIMENSIONAL, AND BULK STANDARDS

1. **Land Requirements §1-16-217 (A):** *The land use pattern of the Comprehensive Plan and the district regulations of the zoning ordinance shall form the basic theme of the design pattern of the proposed subdivision.*

The General Commercial zoning district and land use designation are intended to provide general retail commercial and business services. The existing mall and the design pattern of the proposed subdivision meet the requirements for this district and comply with the intent of the land use designation.

2. **Land Requirements §1-16-217 (B):** *The subdivision design shall take advantage of the uniqueness of the site reflected by topography, soils, the wooded areas, water bodies and the relationship to adjoining subdivisions and land uses, both proposed and existing.*

The existing site is currently developed as a parking area and therefore does not include unique topography, soils, wooded areas or water bodies. However, the proposed subdivision design is consistent with the existing mall and established development pattern in the vicinity of the subject property.

3. **Dimensional Requirements/Bulk Standards §1-19-6.100:** Section 1-19-6.100 of the Zoning Ordinance stipulates the setback requirements and the minimum lot area for the proposed use. The setback requirements for a 'commercial use' within the GC zoning district are 25-foot front yard, 25-foot rear yard, with 8' side yards. The minimum lot size for the zoning district is 12,000 square feet. The proposed lot size (1.04 acres) and lot dimensions provide ample area for development of a typical commercial use with associated parking. The proposed plan meets the required Bulk/Dimensional requirements for the General Commercial zoning district.
4. **Floodplain District Regulations (§1-19-9.110) and Waterbody Buffer Requirements (§1-19-9.400):** *A minimum setback of 25 feet shall be provided from all Floodplain district boundaries. No new development shall be permitted in areas of flooding soils. Waterbody buffer width shall be derived by calculating the gradient of the slope within a 175 foot cross section. The minimum waterbody buffer shall be 100 feet.*

The proposed lot is located within the boundaries of an existing paved parking area and therefore does not contain any floodplain, restricted or sensitive soils, or sensitive environmental features. The proposed subdivision meets the requirements of §1-19-9.110 and §1-19-9.400.

Land, Dimensional, and Bulk Standards Findings/Conclusions

The proposed subdivision meets all land, dimensional, and bulk standards.

B. ACCESS

1. **Public Facilities §1-16-12 (B)(3)(b):** *For major subdivisions; Lots must access a publicly-maintained road with a continuously paved surface that is at least 20 feet in width.*

The Applicant proposes to use the existing Wal-Mart entrance off of Guilford Drive to serve Lot 1A. The entrance meets County standards for a commercial entrance. The proposed entrance meets sight distance requirements and has been approved by Development Review Engineering Staff. Road frontages along MD 85 have been labeled as "Denied Access".

2. **Lot Access to Streets §1-16-240:** *(A) The Planning Commission shall have the right to approve or disapprove any point of ingress and egress to any lot... (B) The Planning Commission may require the subdivider to provide ingress and egress to a particular lot or tract through the remainder of the property...*

The Applicant proposes to use the existing Wal-Mart entrance off of Guilford Drive to serve Lot 1A. The proposed entrance meets sight distance requirements and has been approved by Development Review Engineering Staff

3. **Driveway Entrance Spacing Policy:** *This policy, adopted by the FcPc in 2002 and amended in 2004, provides a system of evaluating driveway locations for public safety, to preserve the rural character of roads located in the rural parts of the County, and allowing tighter spacing in areas of the County designated for denser development.*

This Application is not subject to the entrance spacing criteria because no new driveway entrances are proposed.

Access Findings/Conclusions

The proposed lot will meet all County access requirements.

C. WATER AND SEWER FACILITIES

1. **Public Facilities §1-16-12 (C):** *The proposed subdivision shall be disapproved unless each building lot has been approved for individual and/or community sewerage and water facilities by the Health Department.*

The site is to be served by public water and sewer and is classified W-1, S-1. The entire site is in pressure Zone #1 with water coming from New Design WTP and Sewer flowing into the Ballenger McKinney WWTP. While the public sewer and water facilities are currently adequate to serve the Project, the Applicant acknowledges that capacity is not guaranteed until purchased.

D. OTHER APPLICABLE REGULATIONS

Stormwater Management – Chapter 1-15.2: This single lot subdivision will address SWM at the time of site plan application.

Adequate Public Facilities Ordinance (APFO) – Chapter 1-20:

1. **Schools.** Schools are not impacted because the proposed development is a non-residential use.
2. **Public Water/Sewer.** The Property has a water and sewer classification of W-1 (Connected), S-1 (Connected). While the public sewer and water facilities are currently adequate to serve the project, the Developer recognizes that capacity is not guaranteed until purchased. APFO approval for sewer and water does not guarantee that plats will be recorded and building permits will be issued. Plat recordation and building permit issuance are subject to compliance with the Annotated Code of Maryland, Environment Article Section 9-512, et. seq and all applicable county regulations, including but not limited to Sec. 1-16-106 of the Frederick County Subdivision Regulations.

- 3. Roads.** As proposed in the traffic impact analysis (TIA) performed by Mike Nalepa, dated June 28, 2013, and consistent with the Sonic site plan SP-97-36A, the Project will generate 111 mid-day and 103 pm weekday, and 141 Saturday, peak hour driveway trips and is required to mitigate all road improvements that do not satisfy level of service standards per §1-20-31. In addition, the Developer is required to provide fair share contributions to existing escrow accounts per §1-20-12(H).

In full satisfaction of APFO requirements to mitigate site-generated trips per §1-20-31, the Developer shall pay into a new County-held escrow account, the following pro rata contribution:

New escrow account for MD 85/Guilford Drive Intersection: Addition of a second northbound left turn lane on MD - The estimated cost of the Road Improvement is \$439,527. The Developer's proportionate share of this Road Improvement is 7.83%. Therefore the Developer hereby agrees to pay \$34,415 to the escrow account for this Road Improvement.

In satisfaction of APFO requirements to provide fair share contributions to existing escrow accounts per §1-20-12(H), the Developer shall pay into County-held escrow accounts the following pro rata contributions:

- A. Escrow Account No. 3259 for I-270 Northbound Ramps and MD 85 Intersection - The estimated cost of the Road Improvement is \$2,300,000. The Developer's proportionate share of this Road Improvement is 0.24%. Therefore the Developer hereby agrees to pay \$5,520 to the escrow account for this Road Improvement.
- B. Escrow Account No. 3247 for a signal and ped phase at New Design Road and Corporate Drive - The estimated cost of the improvement is \$156,800. The Developer's proportionate share of this Road Improvement is 3.38%. Therefore the Developer hereby agrees to pay \$5,300 to the escrow account for this Road Improvement.
- C. Escrow Account No. 3306 for a southbound right turn lane at the intersection of New Design Road and Crestwood Boulevard. - The estimated cost of the improvement is \$241,000. The Developer's proportionate share of this Road Improvement is 1.38%. Therefore the Developer hereby agrees to pay \$3,325 to the escrow account for this Road Improvement.
- D. Escrow Account No. 3307 for a signal at New Design Road and Crestwood Boulevard - The estimated cost of the improvement is \$200,000. The Developer's proportionate share of this Road Improvement is 0.63%. Therefore the Developer hereby agrees to pay \$1,260 to the escrow account for this Road Improvement.

Therefore, prior to recordation of the final plat, the Developer hereby agrees to pay \$49,820 to the escrow accounts described above for these Road Improvements. Should these payments not be made within one year of the execution of the Letter of Understanding, the County reserves the right to adjust this amount, based on an engineering cost index.

Forest Resource Ordinance – Chapter 1-21: The Sonic site was mitigated for FRO when Lot 1 was recorded in 1994 as part of the development process for Wal-Mart. Therefore the FRO requirements for this site have been met.

Summary of Agency Comments

<i>Other Agency or Ordinance Requirements</i>	<i>Comment</i>
<i>Development Review Engineering (DRE):</i>	Conditional Approval
<i>Development Review Planning:</i>	Hold: Address all agency comments as the plat proceeds to completion.
<i>State Highway Administration (SHA):</i>	N/A
<i>Div. of Utilities and Solid Waste Mngt. (DUSWM):</i>	Conditional Approval
<i>Health Dept.</i>	N/A
<i>Office of Life Safety</i>	N/A
<i>DPDR Traffic Engineering</i>	Conditional Approval
<i>Historic Preservation</i>	N/A

RECOMMENDATION

Staff has no objection to conditional approval of the proposed combined Preliminary/Final Subdivision. Preliminary Plan approval may be granted for the lesser of five (5) years from Planning Commission approval or the period of APFO approval. Therefore, if approved, the preliminary plan approval will be valid until November 13, 2016. If the Planning Commission conditionally approves the subdivision and APFO, the APFO approval will be valid for a period of three (3) years from the date of Planning Commission approval or November 13, 2016.

Based upon the findings and conclusions as presented in the staff report the application meets or will meet all applicable zoning, APFO, and FRO requirements once the following conditions are met:

1. Address all agency comments as the plan proceeds through to completion.

Prior to final plat recordation all of the following must be completed:

1. All necessary water and/or sewer easements shall be submitted, approved and recorded, and the Liber / Folio numbers shown on the plat.
2. Improvement plans must be approved.
3. The required W/S facilities must be under contract and be within 90 days of completion/operation before DUSWM can certify recordation of plats. Work must be commenced, i.e., NTP issued and noticeable work completed. Staff notes that an 89 day construction contract will not certify plat recordation.
4. FRO mitigation must be provided prior to recordation of the lot.

PLANNING COMMISSION ACTION

MOTION TO APPROVE AS MODIFIED

I move that the Planning Commission **APPROVE** S-1044 AP #13780, including APFO approval, **with conditions** as listed in the staff report for the proposed Locust Level Lot 1A Combined Preliminary/Final Subdivision, based on the findings and conclusions of the staff report and the testimony, exhibits, and documentary evidence produced at the public meeting.





**FREDERICK COUNTY GOVERNMENT
DIVISION OF COMMUNITY DEVELOPMENT**

Eric E. Soter, Division Director

*Planning & Development Review Department
Jim Gugel, Planning Director*

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Lori L. Depies, CPA
County Manager

ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING

Locust Level, Lot 1 (Sonic)

Preliminary Plan #S1044 AP #13782

In General: The following Letter of Understanding ("Letter") between the Frederick County Planning Commission ("Commission") and Sonic Outpost, LLC (the "Developer"), together with its/their successors and assigns, sets forth the conditions and terms which the Commission deems to be the minimum necessary improvements dealing with school, water, sewer, and road improvements that must be in place for the property identified below to be developed, as proposed under the Lot 1A of Locust Level Preliminary Plan (the "Project"), in compliance with the Frederick County Adequate Public Facilities Ordinance ("APFO").

The Developer, its successors and assigns, hereby agrees and understands that unless the required improvements (or contributions to road escrow accounts, as specified below) are provided in accordance with this Letter, APFO requirements will not be satisfied and development will not be permitted to proceed.

This Letter concerns itself with the Developer's 1.04 acre subdivision from a 22.57 +/- acre parcel of land, which is zoned General Commercial (GC), and located in the northwest quadrant of MD 85 and Guilford Drive, with access on Guilford Drive. This APFO approval will be for the development of a Sonic Restaurant which is shown on the companion site plan (SP #97-36A) of the Project, which was conditionally approved by the Commission on November 13, 2013.

Schools: Schools are not impacted because the development of the property is a non-residential use.

Water and Sewer: The Property has a water and sewer classification of W-1 (Connected), S-1 (Connected). While the public sewer and water facilities are currently adequate to serve the project, the Developer recognizes that capacity is not guaranteed until purchased. APFO approval for sewer and water does not guarantee that plats will be recorded and building permits will be issued. Plat recordation and building permit issuance are subject to compliance with the Annotated Code of Maryland, Environment Article Section 9-512, et. seq and all applicable county regulations, including but not limited to Sec. 1-16-106 of the Frederick County Subdivision Regulations.

Road Improvements: As proposed in the traffic impact analysis (TIA) performed by Mike Nalepa, dated June 28, 2013, the Project will generate 111 mid-day and 103 pm weekday, and 141 Saturday, peak hour driveway trips and is required to mitigate all road improvements that do not satisfy level of service standards per §1-20-31. In addition, the Developer is required to provide fair share contributions to existing escrow accounts per §1-20-12(H).

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Therefore, prior to recordation of final plats, the Developer hereby agrees to pay \$49,820 to the escrow accounts described above for these Road Improvements. Should these payments not be made within one year of the execution of this Letter, the County reserves the right to adjust this amount, based on an engineering cost index.

Period of Validity: The APFO approval is valid for three (3) years from the date of Commission approval; therefore, the APFO approval expires on November 13, 2016.

Disclaimer: This Letter pertains to APFO approval only, and shall not be construed to provide any express or implied rights to continue the development process. The Project remains subject to all applicable rules and regulations, including but not limited to those related to zoning, water and sewer, and subdivision. The Planning Commission's jurisdiction and authority is limited by State and County law, and approvals may be required from other local or state governmental agencies before the proposed development can proceed.

Sonic Outpost, LLC:

By:  Date: 10/12/2013
John Louderback

FREDERICK COUNTY PLANNING COMMISSION:

By: _____ Date: _____
Robert Lawrence, Chair or Dwaine E. Robbins, Secretary

ATTEST:

By: _____ Date: _____
Gary Hessong, Director, Permits & Inspections

Planner's Initials / Date _____

County Attorney's Office Initials / Date _____
(Approved as to legal form)